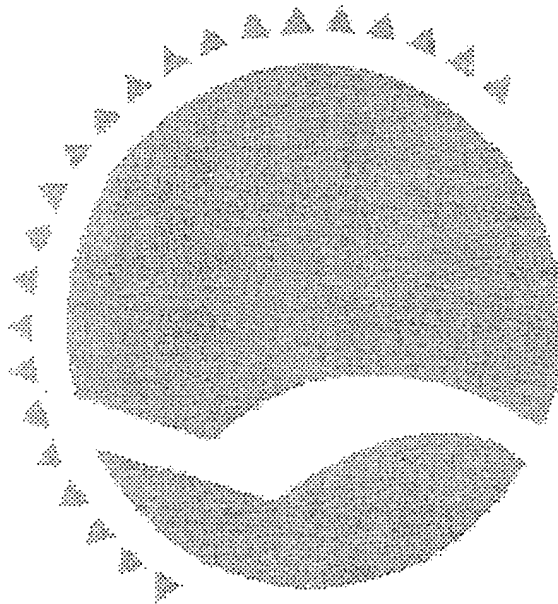

ORAL DEPOSITION OF QINGHUA LIU

February 7, 2003



CONDENSED TRANSCRIPT AND CONCORDANCE
PREPARED BY:

Sunbelt Reporting & Litigation Services
(713) 667-0763 Houston
(214) 747-0763 Dallas

ORAL DEPOSITION OF QINGHUA

February 7, 2003

BSA

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Page 1

1 CAUSE NO. 2001-61352
2 BAYLOR COLLEGE OF MEDICINE) IN THE DISTRICT COURT OF
3 and BCM TECHNOLOGIES, INC.,)
4)
5 Plaintiffs/Counter-defendants.)
6)
7 VS.)
8)
9 CLONTECH LABORATORIES, INC..) HARRIS COUNTY, T E X A S
10)
11 Defendant/Counter-plaintiff,)
12)
13 VS.)
14)
15 INVITROGEN CORPORATION,)
16)
17 Additional Counterclaim)
18 Defendant.) 133RD JUDICIAL DISTRICT
19 *****
20 ORAL DEPOSITION OF
21 QINGHUA LIU
22 February 7, 2003
23 *****
24 Reported By: Taye J. Clark
25 Job No. 39664

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1 ORAL DEPOSITION OF
2 QINGHUA LIU, produced as a witness at the instance of
3 the DEFENDANT/COUNTER-PLAINTIFF, and duly sworn, was
4 taken in the above-styled and numbered cause on the 7th
5 day of February, from 9:14 a.m. to 10:58 a.m., before
6 Taye J. Clark, CSR in and for the State of Texas,
7 reported at the offices of Patton Boggs, LLP, 2001 Ross
8 Avenue, Suite 3000, Dallas, Texas 75201, pursuant to
9 the Texas Rules of Civil Procedure and the provisions
10 stated on the record or attached hereto.
11
12 A P P E A R A N C E S
13
14 FOR THE PLAINTIFFS/COUNTER-DEFENDANTS:
15
16 MS. M. MICHELLE MULLER, PH.D.
17 Vinson & Elkins
18 The Terrace 7
19 2801 Via Fortuna, Suite 100
20 Austin, Texas 78746-7568
21
22 FOR THE DEFENDANT/COUNTER-PLAINTIFF:
23 MR. MARC R. LABGOLD, PH.D.
24 Patton Boggs, LLP
25 8484 Westpark Drive
McLean, Virginia 22102

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NUMBER	DESCRIPTION	PAGE MARKED
1	BCMT Technologies, Inc.. memorandum dated March 18, 1999 to James S. Friou from Christine B. Powaser	10
2	Affidavit of Qinghua Liu, Ph.D.	13
3	United States Patent No. 005851808A	18
4	Handwritten notes	53
5	Handwritten notes	53
6	Copy of an e-mail from "Qun Shan" to "mamie" dated Monday, August 17th, 1998	60

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1 PRELIMINARY PROCEEDINGS
2 THE REPORTER: Going on the record at
3 9:14 a.m.
4 QINGHUA LIU,
5 having been first duly sworn, testified as follows:
6 THE REPORTER: By the Rules?
7 MR. LABGOLD: Yes.
8 THE REPORTER: Do you want to read and
9 sign?
10 MS. MULLER: Yes.
11 MR. LABGOLD: In front of any Notary is
12 fine.
13 EXAMINATION
14 QUESTIONS BY MR. MARC R. LABGOLD:
15 Q Good morning, Dr. Liu.
16 A Good morning to you, too.
17 Q Have you ever been deposed before?
18 A No.
19 Q Okay. Just so you understand, I'm going to ask
20 you some questions, I'm going to show you some
21 documents. Hopefully my questions will be clear enough
22 that you'll understand.
23 If you don't understand the question, just
24 ask and I'll try to clarify.
25 Your counsel may have certain objections.

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1 She'll say, "Objection." The first time she does, I
2 guarantee you you'll sit there and turn around and look
3 at her and wait for something else. That's all it is,
4 she's noting an objection for the record.
5 Unless she instructs you not to answer,
6 I'll expect an answer to the best of your ability.
7 By whom are you currently employed?
8 A U.T. Southwestern in Dallas.
9 Q Okay. And what's your position there?
10 A Post doctoral fellow.
11 Q In whose lab?
12 A Dr. Xiaodong Wang.
13 Q And what type of work are you doing?
14 A Biochemistry.
15 Q On what type of project?
16 A RNA Interference.
17 Q And how long have you been in your current
18 position?
19 A Two years.
20 Q And prior to that, am I correctly understanding
21 you were at Baylor?
22 A Yes.
23 Q And for the entire time you were at Baylor,
24 were you in Dr. Elledge's lab?
25 A Yes.

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1 Q Now, did you prepare -- did you do anything to
2 prepare for your deposition here today?
3 A You mean the deposition document?
4 Q Did you -- did you meet with your attorneys?
5 A Yes.
6 Q And who did you meet with?
7 A I meet with Michelle and Tracy.
8 Q Okay. And for how long did you meet?
9 A About two --
10 MS. MULLER: I'm going to object on the
11 basis of privilege.
12 MR. LABGOLD: That's not a privilege.
13 You want me to show you transcripts from
14 yesterday where I went through the same thing?
15 It's not privileged that you met, it's not
16 privileged where you met, it's not privileged how long
17 you met. I'm allowed to ask him as I did for the last
18 few depositions what documents he reviewed. I'm allowed
19 to ask if anything refreshes his recollection.
20 I can ask him what he discussed during
21 those meetings and you can object and instruct him not
22 to answer, but other than that, I'm entitled to an
23 answer.
24 Q (By Mr. Labgold) How long did you meet?
25 MS. MULLER: Well, I'm going to have to

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1 review that, and if I'm incorrect on that, I will look
2 at it, but for the moment I'm going to object on the
3 basis of privilege.
4 MR. LABGOLD: Well, it's not worth my
5 time, but I will tell you this -- no.
6 Q (By Mr. Labgold) Did you review any documents
7 during your preparation?
8 A No.
9 Q Other than your meeting with your counsel at
10 some unidentified undisclosed location -- the vice
11 president may have been there with you but I won't ask
12 that because that may also be privileged -- did you do
13 anything else to prepare to be able to testify here
14 today?
15 A No.
16 Q Have you spoken to Dr. Elledge anytime in the
17 past year about the subject of the Univector System or
18 this laboratory -- or this litigation?
19 A Yes.
20 Q And what were -- what did you discuss with Dr.
21 Elledge?
22 A I call him, ask him if he knows I have to talk
23 to you, and he said he knew about it, it's fine.
24 Q Did he tell you that he had had a deposition?
25 A Yes.

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1 Q Did he tell you what questions were asked
2 during that deposition?
3 A No.
4 Q Did you discuss anything else concerning the
5 deposition or just asking him if it was okay to do a
6 deposition?
7 A He said, "Answer the question to your best
8 knowledge, do not make any guess."
9 Q Anything else?
10 A No.
11 Q Now, if I understand correctly, you were one of
12 the people who contributed to the development of the
13 Univector System, correct?
14 A Yes.
15 Q And you have prepared a paper which was
16 published, disclosed in that system, correct?
17 A Yes.
18 Q And you also filed a patent application?
19 A Yes.
20 Q And is it my understanding -- is my
21 understanding correct that it is you and Dr. Elledge
22 that created the Univector System?
23 A Yes.
24 Q Now, I understand that Ms. Li was involved in
25 a -- I don't know how best to describe it -- a variation

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1 of the Univector System where it was directed to
2 homologous recombination. Is that your understanding?
3 A It's all part of UPS system.
4 Q Okay. And is that part of what was in your
5 patent?
6 A I don't know.
7 Q Okay. Now, you collect royalties based on your
8 contribution, correct?
9 A Yes.
10 Q And do you -- what frequency do you receive
11 checks on that?
12 A I don't remember.
13 Q Do you recall how much you've received in
14 total, approximately?
15 A I can only estimate, but I'm not going to.
16 Q Was it \$100,000?
17 A Less than that.
18 Q Was it \$50,000?
19 A It's a couple of thousand dollars, I would say.
20 Q Just like \$2,000?
21 MS. MULLER: Objection; form.
22 A I will say a couple of thousand dollars.
23 Q (By Mr. Labgold) Okay. Well, I'm trying to get
24 an idea of what you mean by "a couple."
25 Colloquially in English, "a couple" would

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1 be two?
2 A Oh, really?
3 Q Some people would say "a few" is three, but we
4 might differ on that.
5 A Approximately \$5,000.
6 Q And that's the total which you have received to
7 the best of your understanding?
8 A Per year.
9 Q Per year. Okay.
10 Were you involved in the decision of how
11 the royalties would be distributed amongst you and your
12 coinventors?
13 A No.
14 Q Let me mark as Lui Exhibit 1 a copy of a BCMT
15 document bearing production number BCM 001659 through
16 1664.
17 (Exhibit No. 1 marked.)
18 Q (By Mr. Labgold) If you take a look down at the
19 document about halfway through the page, there's a
20 heading there that says "Inventors."
21 A Uh-huh.
22 Q And then it gives a breakdown between you --
23 Ms. Li and yourself.
24 A Uh-huh.
25 Q And does this comport with your recollection

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1 that for 1999 you received approximately \$5,000?
2 A You mean under the inventors, this part?
3 Q Yeah.
4 A Are you saying if the number looks correct?
5 Q Yeah, your general recollection?
6 A Yes.
7 Q Now, do you know why Ms. Li is not named as an
8 inventor on the patent?
9 A I don't know.
10 MS. MULLER: Objection; form.
11 Q (By Mr. Labgold) Was it your understanding that
12 your contribution to the development of the Univector
13 System and Ms. Li's were equivalent?
14 MS. MULLER: Objection; form.
15 A Can you rephrase the question?
16 Q (By Mr. Labgold) Do you believe that Ms. Li
17 contributed the same amount as you did to the
18 development of the Univector System?
19 MS. MULLER: Objection; form.
20 A No.
21 Q (By Mr. Labgold) Do you know why, then, Ms. Li
22 obtains the same royalties as you do?
23 A I don't know.
24 Q Have you ever discussed that with Dr. Elledge?
25 A No.

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1 Q Have you ever discussed that with anybody else
2 at Baylor or BCMT?
3 A Yes.
4 THE WITNESS: Is that a privilege?
5 MS. MULLER: To the extent that you spoke
6 with counsel or involved communication of counsel, then
7 I instruct you not to answer.
8 A That involves discussion with patent counsel at
9 Baylor.
10 Q (By Mr. Labgold) Well, at any time did you
11 raise a concern with anyone at BCMT as to whether the
12 distribution of royalties was equitable?
13 MS. MULLER: Again, to the extent that
14 that requires you to discuss -- to disclose any
15 conversation with counsel, I instruct you not to answer.
16 MR. LABGOLD: And Counsel, I would -- I
17 don't have the energy or the time to deal with this. I
18 will just note on the record -- and I can tell we're
19 coming back for another deposition, and it's going to be
20 on your client's dime.
21 Because if he's going to Baylor and he's
22 complaining or inquiring as to why his amount is
23 equivalent to somebody who joined the project after the
24 patent was filed, that's not seeking legal counsel.
25 That's a business dispute.

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1 Now, you can instruct him as you will.
 2 I'll give you a moment to think about it. If you're
 3 going to tell me the instruction stands, I'll move on,
 4 and we'll deal with that later.
 5 MS. MULLER: For the moment the
 6 instruction stands.
 7 MR. LABGOLD: Okay.
 8 Q (By Mr. Labgold) Did you ever get an answer as
 9 to why Ms. Li gets the same amount of royalties as you
 10 do despite --
 11 A No.
 12 Q -- the fact that --
 13 Fair enough.
 14 I'd like to mark as Liu Exhibit 2 a copy
 15 of an affidavit which you signed.
 16 (Exhibit No. 2 marked.)
 17 Q (By Mr. Labgold) Can you tell me if you've seen
 18 this document before today?
 19 A Yes.
 20 Q Did you yourself prepare the text of the
 21 document?
 22 A Yes.
 23 Q Did you type it yourself?
 24 A No.
 25 Q So if I understand correctly, you wrote the

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1 text of the document and then forwarded it to somebody
 2 else for typing?
 3 MS. MULLER: Objection; privileged.
 4 To the extent that that requires you to
 5 reveal any conversation you had with counsel, again --
 6 MR. LABGOLD: There is nothing privileged
 7 about that. I am entitled to know how he prepared his
 8 declaration, affidavit, whatever you want to call it,
 9 his sworn statement.
 10 Q (By Mr. Labgold) Are you going to --
 11 MS. MULLER: If it involved a conversation
 12 with counsel, I'm going to instruct him not to answer.
 13 MR. LABGOLD: Have you done this before?
 14 MS. MULLER: Sir?
 15 MR. LABGOLD: Have you done this before?
 16 MS. MULLER: I'm not being deposed here.
 17 Q (By Mr. Labgold) When you signed this
 18 affidavit, did you understand that you were under oath?
 19 A Yes.
 20 Q Did you understand what the consequences were
 21 if you made a statement which were not true, to your
 22 knowledge, in a sworn statement?
 23 A Yes.
 24 Q And do you understand that you are under oath
 25 here today, and that if you do not tell the truth, that

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1 the penalty of perjury adheres to that?
 2 A Yes.
 3 Q Okay. If you take a look at Paragraph 2 under
 4 Roman numeral two, says: (Reading) I contributed to the
 5 development of the univector plasmid-fusion system.
 6 What was your contribution?
 7 A My contributions to develop the Cre enzyme and
 8 show this concept, this system works in principle.
 9 Q When you say "develop the Cre enzyme," what are
 10 you talking about?
 11 A Making the GST-Cre.
 12 Q So making a GST-Cre fusion, correct?
 13 A No.
 14 Q Please explain.
 15 A Not only that, more than that.
 16 Q Okay. Please explain.
 17 A Making the --
 18 MS. MULLER: Objection; form. I'm sorry.
 19 Go ahead.
 20 A Making a fusion protein, express it, an E.
 21 coli, purify it, demonstrate the purified protein has
 22 high -- high specific activity.
 23 Q (By Mr. Labgold) Okay. Now, GST fusion
 24 proteins were known in the art prior to your work,
 25 correct?

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1 A Correct.
 2 Q And the Cre enzyme itself was known in the art
 3 prior to your work, correct?
 4 A Correct.
 5 Q And am I correct in understanding that the Cre
 6 recombinases, the Cre enzyme, its ability to recombine
 7 loxP site was also known in the art, correct?
 8 A Correct.
 9 Q If you take a look at page -- I'm sorry, we got
 10 a stapling error here.
 11 Actually, looking at Page 2 of your
 12 declaration, and you say that the Univector System was
 13 described and explained in an article and then it sets
 14 forth the article. Do you see that?
 15 A Uh-huh, the first two sentences.
 16 Q Yes. And I'd like to mark -- let me give you a
 17 document we've already marked as Eledge Exhibit 3, if
 18 you can confirm for me that is the article to which you
 19 were referring?
 20 A Yes.
 21 Q And when you prepared -- let me ask this: Were
 22 you involved in the preparation of the article?
 23 A Yes.
 24 Q And to the best of your ability, did you
 25 completely and fully describe the Univector System in